



July 21, 2006

HAND DELIVER

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, Massachusetts 02110

Re: Department Investigation into Compliance
with G.L. c. 164, §116B, D.T.E. 06-48

Dear Secretary Cottrell:

On May 19, 2006, the Department of Telecommunications and Energy (the "Department") issued an Order initiating an investigation into compliance with the gate box maintenance and improvement requirements of G.L. c. 164, §116B by gas companies such as The Berkshire Gas Company ("Berkshire" or the "Company") and municipal gas departments established pursuant to the provisions of Chapter 164 of the General Laws. Pursuant to the procedural schedule adopted by the Department, a public hearing was held on June 15, 2006. The Department's order required Berkshire and other operators of gas distribution systems to provide information on their compliance with the requirements of §116B which Berkshire submitted on June 6, 2006. The procedural schedule also provided the opportunity for interested parties to comment on these matters. Several parties, including the Attorney General of the Commonwealth of Massachusetts (the "Attorney General"), submitted comments in this proceeding on June 29, 2006. The established procedural schedule provided that operators could submit reply comments by July 21, 2006. Berkshire participated with certain other natural gas operators through the Northeast Gas Association in the preparation of generic comments that are being submitted to the Department under separate cover. Berkshire is filing these additional written comments to supplement and amplify upon matters addressed in the general comments described above.

As an initial matter, Berkshire recognizes and appreciates the importance of the maintenance and inspection requirements contained within the regulations of the Department as well as the requirements of the United States Department of Transportation ("DOT"). Berkshire is proud of its record for safety, reliability and economical service and has employed and will continue to employ numerous steps to advance these objectives. Berkshire is also fully committed to addressing the requirements of §116B. Section 116B provides that:

Whenever the Commonwealth or a city or town undertakes the repair of streets, roads or sidewalks, the appropriate gas company shall provide for the maintenance and improvements of its gate boxes located in the streets, roads or

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An Energy East Company

sidewalks to be repaired, so that the gate boxes are more easily and immediately accessible. The gas company may apply for funds under c. 90 to assist in paying the costs of maintenance and improvements.

In its filing dated June 6, 2006, Berkshire presented substantial evidence as to its compliance and described a number of initiatives employed in terms of compliance with the requirements of §116B. Importantly, the Attorney General retained an industry expert consultant to review this information as well as similar filings for other gas operators in terms of investigating the compliance of natural gas operators with the requirements of §116B. Berkshire is pleased to note that this independent consultant recognized the comprehensive nature of Berkshire's efforts in this area. The consultant explained that:

Berkshire Gas Company seems to take a longer view on planning and information gathering. They seek information about upcoming projects 18-25 months out. They also seem to have the most active and comprehensive approach to staying on top of pending paving projects.

June 29, 2006, Attorney General comments, Attachment 1, Energy Advisors, LLC Analysis, p. 8.

Berkshire has devoted substantial effort, planning and innovation to the process of addressing compliance with the requirements of §116B. Berkshire believes that these efforts are in the long-term interests of the Company, its customers and the communities that it serves. Berkshire is committed to maintaining this innovative, active and comprehensive approach to addressing the need to maintain or adjust its facilities in response to pending municipal road construction activities.

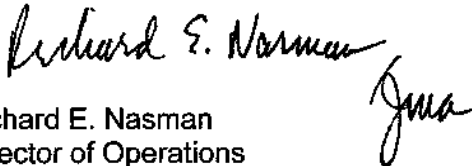
Berkshire notes that while some standardization of procedures and requirements may be considered in terms of ensuring greater industry compliance with the requirements of §116B, the ability of gas operators to take innovative, active and a flexible approach has been beneficial to Berkshire and its customers in terms of meeting the requirements of §116B. The flexible approach also enables Berkshire to respond to the preferences of construction officials in the communities we serve. Also, innovation or the application of new technologies that may be of value or assistance in implementing the requirements of §116B may be frustrated by overly specific regulation that, while perhaps suited for customers in large urban areas, may or may not effectively and efficiently address the requirements of Berkshire and the communities that it works with on a regular and continuing basis. Accordingly, Berkshire encourages the Department to consider reporting requirements as the best means to monitor compliance with the requirements of §116B and to encourage company-specific innovation and compliance programs that will best meet the needs of gas services providers and the communities they serve. Berkshire submits that its experience as recognized by the Attorney General's expert demonstrates the benefits of this type of regulatory approach.

The Company notes that to the extent new requirements for construction maintenance or inspectional activities are developed in the course of this proceeding, additional costs will necessarily be incurred. Before adopting potentially duplicative measures, the Department should establish and consider detailed evidence on both the potential benefits of such measures

and the associated costs. Berkshire also notes that cost recovery pursuant to Chapter 90 (as provided in §116B) is not, as a practical matter, realistic for natural gas distribution companies. This point was confirmed in comments submitted by municipal officials in this proceeding. Berkshire believes that §116B cost recovery pursuant to Chapter 90 was but one means by which cost recovery for necessary programs that are to be developed in response to additional directives from the Department. Further, Berkshire, like many other gas utilities, is subject to a rate plan. See The Berkshire Gas Company, D.T.E. 01-56 (2002). Berkshire expects that adjustments to rate plans might also be appropriate in the face of additional requirements beyond the standards and practices in place by Berkshire which were found by the Attorney General's consultant to be the most "active and comprehensive" approach in the Commonwealth.

Berkshire appreciates the opportunity to comment on this important matter and looks forward to continuing to work with the Department and other stakeholders such as the Attorney General to refine and enhance programs such as the compliance efforts with the requirements of §116B to provide for greater safety, reliability and cost efficiency in terms of the provision of natural gas service to customers in Massachusetts.

Sincerely,



Richard E. Nasman
Director of Operations

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